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COMMISSIONER
MARC SPITZER
COMMISSIONER

OPEN MEETING ITEM 11/21/02



ARIZONA CORPORATION COMMISSION

ORIGINAL
BRIAN C. McNEIL
EXECUTIVE SECRETARY

MARK SENDROW
DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007-2996
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MEMORANDUM

TO: Chairman William A. Mundell
Commissioner Jim Irvin
Commissioner Marc Spitzer

Arizona Corporation Commission

DOCKETED

FROM: Mark Sendrow
Director of Securities

NOV 08 2002

DOCKETED BY CAR

DATE: November 6, 2002

RE: Proposed Default Order Re: Meracana Mining Corporation, Docket No. S-03418A-01-0000 (Ronald Lee Keel, et al.)

CC: Brian C. McNeil, Executive Secretary

RECEIVED
2002 NOV -8 A 9:56
AZ CORP COMMISSION
DOCUMENT CONTROL

Attached is a proposed Order To Cease And Desist, Order For Restitution, Order For Administrative Penalties And For Other Affirmative Action ("Order") against Respondent Meracana Mining Corporation ("Meracana"). Pursuant to this Order, Meracana shall permanently cease and desist from violating the Securities Act, be ordered to pay restitution of \$136,439 to investors and pay an administrative penalty of \$15,000.

Meracana was incorporated in Arizona in April 1989. Meracana raised over \$589,000 from investors by issuing unregistered stock and promissory notes from about May 1992 to April 1999. With this money, Meracana was to mine for gold on exploitation concessions in Costa Rica that were either owned or leased by the company. To date, no gold has been mined by Meracana in Costa Rica. Although a project report was delivered to at least most of the investors, the project report contained material misstatements and omissions.

On December 11, 2001, the Securities Division ("Division") filed a Notice of Opportunity For Hearing Regarding Proposed Order To Cease And Desist, For Restitution, For Administrative Penalties, And For Other Affirmative Action ("Notice") alleging that Meracana, along with the other two Respondents, as unregistered dealers or salesmen, engaged in the offer and sale of unregistered securities in the form of stocks and promissory notes and committed securities fraud. On December 12, 2001, the Division properly served a copy of the Notice upon Respondent Keel, President of Meracana. Although Keel, who is not an attorney, requested a hearing on behalf of Meracana, the company never made a valid and legitimate request for a hearing through an attorney as it is required to do by Arizona law. Therefore, a default order is appropriate.

The Division recommends approval of the attached proposed Order.

Originator: Tony Bingham

1200 WEST WASHINGTON, PHOENIX, ARIZONA 85007 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701

www.cc.state.az.us

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
3 Chairman
4 JIM IRVIN
5 Commissioner
6 MARC SPITZER
7 Commissioner

8 In the matter of
9 Ronald Lee Keel
10 1849 Viola Drive
11 Sierra Vista, Arizona 85635
12 Donald Ramey
13 211 N. 4th Street
14 Sierra Vista, Arizona 85636
15 Meracana Mining Corporation
16 1849 Viola Drive
17 Sierra Vista, Arizona 85635,

18 Respondents.

) DOCKET NO. S-03418A-01-0000
)
)

) **ORDER TO CEASE AND DESIST, ORDER**
) **FOR RESTITUTION, ORDER FOR**
) **ADMINISTRATIVE PENALTIES AND FOR**
) **OTHER AFFIRMATIVE ACTION AGAINST**
) **RESPONDENT MERACANA MINING**
) **CORPORATION**

) DECISION NO. _____
)
)

19 **I.**

20 **INTRODUCTION**

21 1. On December 11, 2001, the Securities Division ("Division") of the Arizona
22 Corporation Commission ("Commission") filed a Notice of Opportunity For Hearing Regarding
23 Proposed Order To Cease And Desist, For Restitution, For Administrative Penalties, And For
24 Other Affirmative Action ("Notice") against Meracana Mining Corporation ("MERACANA") and
25 the other Respondents, alleging violations of the Securities Act of Arizona, A.R.S. § 44-1801 et.
26 seq. ("Securities Act"). The Notice specified that MERACANA would be afforded an opportunity
for an administrative hearing upon written request filed with the Commission's Docket Control
within ten (10) days after receipt of the Notice, in accordance with A.R.S. § 44-1972 and A.A.C.
Rule R14-4-306. The Notice also specified that if MERACANA did not timely request a

1 4. RAMEY, the second largest shareholder in MERACANA currently owns
2 approximately twenty-four percent of the outstanding shares and was the vice-president, a director
3 and the secretary of MERACANA since its incorporation until his resignation on May 3, 2002.

4 5. The respondents may be collectively referred to as "RESPONDENTS."

5 6. From approximately May 1992 to April 1999, RESPONDENTS, offered for sale, sold,
6 participated in and induced the sale of stock issued by MERACANA to about twenty-two investors
7 for a total of \$300,000 or more. Many of these investors were friends or relatives of KEEL.

8 7. From approximately September 1993 to January 1998, RESPONDENTS, offered for
9 sale, sold, participated in and induced the sale of promissory notes issued by MERACANA to about
10 nine investors for a total of \$140,000 or more. Many of these investors were friends or relatives of
11 KEEL.

12 8. In approximately October 1993, MERACANA'S wholly owned Costa Rican subsidiary
13 purchased three exploitation concessions and leased one other exploitation concession in Costa Rica.
14 These exploitation concessions gave MERACANA the right to mine for gold and other minerals on
15 the properties covered by the concessions. The total purchase price paid for the three concessions
16 was approximately \$414,000. It is not known what the cost of the leased concession was.

17 9. Currently, MERACANA owns only one of the original three exploitation concessions
18 purchased and does not hold a lease on any exploitation concession in Costa Rica. The concession
19 that MERACANA still owns is referred to as the "Aguabuena." The Aguabuena was the most
20 expensive concession MERACANA purchased.

21 10. MERACANA has never started mining operations in Costa Rica on the Aguabuena, or
22 on any exploitation concession it has owned or leased in the past. Likewise, to date, no gold has been
23 mined by MERACANA in Costa Rica.

24 11. Beginning in approximately 1993, RESPONDENTS attempted to raise at least
25 \$600,000, by issuing stock and promissory notes, to mine for gold on the exploitation concessions
26 MERACANA owned and leased in Costa Rica. RESPONDENTS drafted a project report that was

1 distributed to most if not all of the investors in MERACANA. According to the project report, once
2 funding was received, mining was to begin on the Aguabuena concession and then sampling,
3 development and finally production would start on the other concessions. The project report included
4 the projected expenses and profits for mining some of the concessions and showed how mining
5 would proceed in phases with each phase being more profitable. The last phase of mining on the
6 Aguabuena concession showed a projected net profit of over \$24,000,000.

7 12. The project plan distributed to investors included material misstatements and omissions.
8 These material misstatements and omissions were not rectified with investors before they invested.
9 The project report claimed that the Costa Rican Department of Geology and Mines had certified
10 proven reserves of 7,500 kilograms of gold on the Aguabuena concession. The Costa Rican
11 Department of Geology and Mines never certified proven reserves of gold on the Aguabuena. The
12 Costa Rican Department of Geology and Mines only accepted the estimated reserves of gold on the
13 Aguabuena concession reported to it by a geologist. No financial statements, i.e., balance sheet and
14 income statement, were disclosed in the project report or provided to investors. The cost to purchase
15 the three exploitation mining concessions in Costa Rica and the cost of leasing a mining exploitation
16 concession in Costa Rica were not disclosed in the project report or provided to investors. No
17 disclosure of the risks of gold mining, particularly in Costa Rica, were ever made to investors.

18 13. In addition, no disclosure was made to investors that in October 1995, KEEL signed a
19 loan agreement jointly with his spouse and on behalf of MERACANA by which he could take cash
20 advances from MERACANA funds. The cash advances were treated as loans by the corporation to
21 KEEL and his wife. The cash advances bore interest at the rate of 8.5% and were to be repaid from
22 future dividends by MERACANA. From approximately October 1995 to the present, KEEL
23 received cash advances of at least \$50,000 from MERACANA in accordance with this agreement.
24 KEEL has not repaid any of these cash advances.

25 14. Furthermore, no disclosure was made to investors that their money might be used for
26 uses other than mining operations in Costa Rica in that it might be loaned to one or more persons

1 through an unsecured loan. In or about January 1996, MERACANA loaned John Ebdon at least
2 \$12,500 on an unsecured basis. The Commission entered an Order on May 4, 2000, for \$4.2 million
3 dollars against John Ebdon and two other respondents in S-03375A, Decision No. 62509, for
4 securities fraud. Although Mr. Ebdon did eventually repay the loan, the money was at risk while the
5 loan was outstanding.

6 III.

7 CONCLUSIONS OF LAW

8 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
9 Arizona Constitution and the Securities Act.

10 2. MERACANA offered or sold securities within or from Arizona, within the meaning
11 of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

12 3. MERACANA violated A.R.S. § 44-1841 by offering or selling securities that were
13 neither registered nor exempt from registration.

14 4. MERACANA violated A.R.S. § 44-1842 by offering or selling securities while
15 neither registered as a dealer or salesman nor exempt from registration.

16 5. MERACANA violated A.R.S. § 44-1991 by (a) employing a device, scheme or
17 artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c)
18 engaging in transactions, practices or courses of business which operate or would operate as a
19 fraud or deceit. MERACANA'S conduct includes, but is not limited to, the following:

20 a. Misrepresented to investors that the Costa Rican Department of Geology and
21 Mines had certified proven reserves of 7,500 kilograms of gold on the Aguabuena concession
22 when the Costa Rican Department of Geology and Mines never certified proven reserves on this
23 concession but only accepted the reported reserves of gold on the concession.

24 b. Failed to disclose to investors financial statements, i.e., balance sheet and
25 income statement. Since financial statements were not disclosed, investors could not ascertain the
26 financial condition of MERACANA.

1 c. Failed to disclose to investors the cost to purchase the three exploitation mining
2 concessions in Costa Rica and the cost of leasing a mining exploitation in Costa Rica.

3 d. Failed to disclose to investors the risk of gold mining, particularly in Costa
4 Rica.

5 e. Failed to disclose to investors that KEEL was taking cash advances from
6 MERACANA'S funds, the sum of the cash advances which increased to at least \$50,000, that the
7 cash advances were to be repaid from future dividends by MERACANA and that none of the cash
8 advances had been repaid by KEEL.

9 f. Failed to disclose to investors that their money might not be used for mining
10 operations in Costa Rica and that it might be loaned to one or more individuals through an
11 unsecured loan.

12 6. MERACANA'S conduct is grounds for a cease and desist order pursuant to A.R.S. §
13 44-2032.

14 7. MERACANA'S conduct is grounds for an order of restitution pursuant to A.R.S. §
15 44-2032.

16 8. MERACANA'S conduct is grounds for administrative penalties under A.R.S.
17 § 44-2036.

18 **IV.**

19 **ORDER**

20 **THEREFORE**, on the basis of the Findings of Fact and Conclusions of Law, the
21 Commission finds that the following relief is appropriate, in the public interest, and necessary for
22 the protection of investors:

23 **IT IS ORDERED**, pursuant to A.R.S. § 44-2032, that MERACANA, and any of
24 MERACANA'S agents, employees, successors and assigns, permanently cease and desist from
25 violating the Securities Act.

26 ...

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that MERACANA shall,
2 jointly and severally with any co-respondent so ordered pay restitution to investors shown on the
3 records of the Commission, excluding any present or former officers/directors of MERACANA
4 and their spouses along with any individuals related to RESPONDENTS, in the amount of
5 \$136,439 plus interest at the rate of 10% per annum from the date of this Order until paid in full.
6 Payment shall be made by cashier's check or money order payable to the "State of Arizona" to be
7 placed in an interest-bearing account maintained and controlled by the Arizona Attorney General.
8 The Arizona Attorney General shall disburse the funds on a pro rata basis to investors. Any funds
9 that the Attorney General is unable to disburse shall revert to the state of Arizona. For the
10 purposes of this Order, a bankruptcy filing by MERACANA shall be an act of default on
11 MERACANA'S restitution obligations.

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1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that MERACANA shall pay
2 an administrative penalty in the amount of \$15,000. Payment shall be made in full by cashier's
3 check or money order on the date of this Order, payable to the "State of Arizona." Any amount
4 outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid
5 in full. The payment obligation for this administrative penalty is subordinate to any restitution
6 obligations ordered herein.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

8
9
10 CHAIRMAN

COMMISSIONER

COMMISSIONER

11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
12 Executive Secretary of the Arizona Corporation
13 Commission, have hereunto set my hand and caused the
14 official seal of the Commission to be affixed at the
15 Capitol, in the City of Phoenix, this _____ day of
16 _____, 2002.

17 _____
18 BRIAN C. McNEIL
19 Executive Secretary

20
21 _____
22 DISSENT

23 This document is available in alternative formats by contacting Shelly M. Hood, Executive
24 Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail
25 shood@cc.state.az.us.

26 (tbb)

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1 STATE OF ARIZONA)
2 County of Maricopa)

AFFIDAVIT OF SERVICE

2001 DEC 13 A 11: 33

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4 I, Jerry Lowe, for the Securities Division of the Arizona Corporation Commission, hereby certify
5 that on the 12th day of December, 2001 at 10:40 a.m., I served a copy of **Notice Of Opportunity**
6 **For Hearing Regarding Proposed Order To Cease And Desist, For Restitution, For**
7 **Administrative Penalties, And For Other Administrative Action, Docket No. S-03418A-01-**
8 **0000, upon Ronald L. Keel, individually, and Meracana Mining Corporation, Ronald L. Keel,**
9 **President, at 1849 Viola Drive, Sierra Vista, AZ, by: Personal Service.**

10
11
12 Jerry Lowe 13 Dec. 01
13 AFFIANT DATE

14
15 SUBSCRIBED AND SWORN TO BEFORE me this 13th day of
16 December, 2001.

17
18 Lisa Busse
19 NOTARY PUBLIC

20 My Commission Expires:

21  Notary Public State of Arizona
22 Maricopa County
23 Lisa Busse
24 Expires October 30, 2004

25
26 **EXHIBIT A**